

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Massachusetts
Name of Movant David Talley	Prisoner No. 24776-038	Case No. 03-10188-RWZ
Place of Confinement Plymouth County Correctional Facility		
UNITED STATES OF AMERICA		V. DAVID A. TALLEY (name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack
U.S. District Court for the District of Massachusetts, at Boston
2. Date of judgment of conviction March 12, 2004
3. Length of sentence 188 months
4. Nature of offense involved (all counts) felon in possession firearm (18 U.S.C. 922(g));
possession with intent to distribute cocaine base (21 U.S.C. 841);
enhancement pursuant to 21 U.S.C. 851.

5. What was your plea? (Check one)

(a) Not guilty
 (b) Guilty
 (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one) N/A
 (a) Jury
 (b) Judge only
7. Did you testify at the trial? N/A
 Yes No
8. Did you appeal from the judgment of conviction?
 Yes No

U.S. DISTRICT COURT
CLERK'S OFFICE
MASSACHUSETTS
b69

9. If you did appeal, answer the following: N/A

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information: N/A

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition etc. Yes No

(1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (i) or (j) without facts.

(a) Conviction obtained by plea of guilty which was unlawfully induced.

- (a) Conviction obtained by plea of guilty which was unlawfully induced by the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: I was sentenced in violation of the Sixth Amendment as applied in Apprendi v. New Jersey, 120 S.Ct. 2348 (2000), Blakely v. Washington, 124 S.Ct. 2531 (2004) and United States v. Booker, 125 S.Ct. 738 (2005). Supporting FACTS (state *briefly* without citing cases or law) _____

I was sentenced pursuant to the United States Sentencing Guidelines and 18 U.S.C. s. 3553(b). _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

The grounds set forth in 12A were not previously presented. My counsel failed to raise them.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing J. Martin Richey, Federal Defender Office, 408 Atlantic Ave.
Boston, MA 02110.

(b) At arraignment and plea same

(c) At trial N/A

(d) At sentencing same

(e) On appeal N/A(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)

Signature of Movant